

**BEFORE THE**  
**TENNESSEE STATE BOARD OF EQUALIZATION**

*In Re:* VN Hotel Investors, LLC )  
Map 071-02-0, Parcel 147.00 ) Davidson County  
Commercial Property )  
Tax Year 2006 )

**INITIAL DECISION AND ORDER**

**Statement of the Case**

The Davidson County Assessor of Property ("Assessor") has valued the subject property for tax purposes as follows:

<u>LAND VALUE</u>	<u>IMPROVEMENT VALUE</u>	<u>TOTAL VALUE</u>	<u>ASSESSMENT</u>
\$674,300	\$3,806,700	\$4,481,000	\$1,792,400

On August 28, 2006, the State Board of Equalization ("State Board") received an appeal by the property owner. This property was not appealed to the Davidson County Board of Equalization ("county board") during its regular 2006 session.

The undersigned administrative judge conducted a jurisdictional hearing of this matter on March 16, 2007, in Nashville at the Division of Property Assessment. In attendance at the hearing were Scott Duong, the taxpayer; Bryan Mills, Esquire, from Litwin & Litwin, PLLC; Dennis Donovan from the Davidson County Assessor's Office and Margaret Darby, Esquire, from the Metro. Legal Department.

**FINDINGS OF FACT AND CONCLUSIONS OF LAW**

This appeal concerns a commercial tract of land functioning as a hotel, located at 2401 Brick Church Pike in Nashville. The parties have stipulated that the market value of this property as of the January 1, 2006 is \$2,991,000. The only issue to be decided is whether the State Board has the requisite jurisdiction to adopt that value.

In 2005 the current taxpayer purchased the property from the Bank Tennessee in June, the property was properly recorded within thirty (30) days at the Davidson County's Register of Deeds office in July 2005, but despite this procedure the current taxpayer did not receive the 'delinquent tax bill for 2005' from the Trustee's Office, instead it was sent to the prior owner, Bank Tennessee and then forwarded to the taxpayer (taxpayer's collective exhibit #1). By the time the taxpayer received the 'delinquent tax bill for 2005' the time for appealing to the Davidson County Board of Equalization had past (for both 2005 and 2006).

Tennessee Code Annotated (T.C.A.) § 67-5-1401 provides (*in relevant part*) that:



If the taxpayer fails, neglects or refuses to appear before the county board of equalization prior to its final adjournment, the assessment as determined by the assessor shall be conclusive against the taxpayer, and such taxpayer shall be required to pay the taxes on such amount....See also T.C.A. § 67-5-1412(b)(1).

However, in 1991, the General Assembly enacted an amendment affording the taxpayer the opportunity for a hearing to demonstrate "reasonable cause" for failure to appeal to the local board of equalization within the allotted time. T.C.A. § 67-5-1412(e). The Assessment Appeals Commission, appointed by the State Board pursuant to T.C.A. § 67-5-1502, has historically construed the term *reasonable cause* to mean some circumstance beyond the taxpayer's control. See, e.g., Appeal of Associated Pipeline Contractors, Inc. (Williamson County, Tax Year 1992, Final Decision and Order, August 11, 1994); Appeal of John Orovets (Cheatham County, Tax Year 1991, Final Decision and Order, December 3, 1993).

In the opinion of the administrative judge, the proof establishes that the taxpayer followed the proper steps to make sure that they were *recorded* as the owners of the subject property. The County Assessor's representative acknowledged that when their office receives a deed the procedure is for their records department to enter the information into their system so that from that time forward the 'correct information' is in the system, this information is then forwarded to the Trustee.

Mr. Mills states that his client has never received a Notice of any kind from the Assessor or Trustee's offices. However, Ms. Darby correctly pointed out that in 2006 there was no change in the assessment amount, so under the statute there would have been no notice sent to individual taxpayers.<sup>1</sup> The only 'Notice' would have been the general public notice that was required by statute and that runs in the newspaper for the seven (7) consecutive dates (county's collective exhibit #2). Mr. Mills indicated that when the taxpayer received a copy of the delinquent tax bill for 2005 from the prior owner his client promptly filed the appeal to the State Board of Equalization within forty-five days; he argues that they are timely due to the *saving clause* under Ragsdale. Based on the decision in Vivian & Russ Ragsdale, Davidson County, 2001, Assessment Appeals Commission, the administrative judge finds that reasonable cause does exist for the taxpayers failure to file before the Davidson County Board of Equalization.

#### ORDER

It is, therefore, ORDERED that the following values be adopted for tax year 2006:

<u>LAND VALUE</u>	<u>IMPROVEMENT VALUE</u>	<u>TOTAL VALUE</u>	<u>ASSESSMENT</u>
\$674,300	\$2,316,700	\$2,991,000	\$1,196,400

<sup>1</sup> It should be noted that the re-appraisal year was 2005 so the Assessment Change Notice would have gone out at that time.

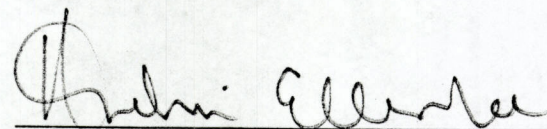


Pursuant to the Uniform Administrative Procedures Act, Tenn. Code Ann. §§ 4-5-301—325, Tenn. Code Ann. § 67-5-1501, and the Rules of Contested Case Procedure of the State Board of Equalization, the parties are advised of the following remedies:

1. A party may appeal this decision and order to the Assessment Appeals Commission pursuant to Tenn. Code Ann. § 67-5-1501 and Rule 0600-1-.12 of the Contested Case Procedures of the State Board of Equalization. Tennessee Code Annotated § 67-5-1501(c) provides that an appeal **“must be filed within thirty (30) days from the date the initial decision is sent.”** Rule 0600-1-.12 of the Contested Case Procedures of the State Board of Equalization provides that the appeal be filed with the Executive Secretary of the State Board and that the appeal **“identify the allegedly erroneous finding(s) of fact and/or conclusion(s) of law in the initial order”**; or
2. A party may petition for reconsideration of this decision and order pursuant to Tenn. Code Ann. § 4-5-317 within fifteen (15) days of the entry of the order. The petition for reconsideration must state the specific grounds upon which relief is requested. The filing of a petition for reconsideration is not a prerequisite for seeking administrative or judicial review.

This order does not become final until an official certificate is issued by the Assessment Appeals Commission. Official certificates are normally issued seventy-five (75) days after the entry of the initial decision and order if no party has appealed.

ENTERED this 29th day of March, 2007.



ANDREI ELLEN LEE  
ADMINISTRATIVE JUDGE  
TENNESSEE DEPARTMENT OF STATE  
ADMINISTRATIVE PROCEDURES DIVISION

c: Bryan Mills, Esq.  
Jo Ann North, Assessor of Property